

Message Text

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ACTION AF-18

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FM AMEMBASSY KHARTOUM

TO SECSTATE WASHDC PRIORITY 8273

INFO AMEMBASSY BRUSSELS

C O N F I D E N T I A L SECTION 1 OF 2 KHARTOUM 1275

E.O. 11652: GDS

TAGS: PINS,NFU

SUBJ: KHARTOUM ASSASSINATION - SUPERIOR COURT TRIAL

REF: KHARTOUM 1246

1. SUMMARY: TRIAL MOVING RAPIDLY TO CONCLUSION AS BOTH DEFENSE AND PRESECUTION IN JUNE 3 SESSION WAIVED FURTHER WITNESSES. CHIEF JUDGE HAS GIVEN PROSECUTION UNTIL JUNE 10 TO PREPARE CLOSING ARGUMENTS (WHICH WILL THEN BE PRIVATELY GIVEN TO COURT AND DEFENSE) AND HAS SET JUNE 15 AS DATE WHEN BOTH SIDES WILL PRESENT THEIR SUMMATIONS TO COURT. DECISION SHOULD FOLLOW WITHIN FEW DAYS. THERE IS SOME SPECULATION THAT SPEED WITH WHICH TRIAL MOVING REFLECTS DEAL. BUT WE INCLINED BELIEVE IT MAY IN FACT REFLECT COMBINATION OF BSO DESIRE GET MATTER BEFORE NIMEIRI PLUS CLEVER LEGAL MANEUVERING BY PROSECUTION. END SUMMARY.

2. COURT SESSION JUNE 3 BEGAN ROUTINELY WITH JUDGE ANNOUNCING COURT HAD WRITTEN APPROPRIATE AUTHORITIES TO OBTAIN COUNCIL OF MINISTERS STATEMENT REQUESTED BY DEFENSE. DEFENSE LAWYER THEN BEGAN CROSS-EXAMINING POLICE SUPERINTENDENT ABBAS MEDANI IN CONSIDERABLE DETAIL PARTICULARLY REGARDING WEAPONS USED, NUMBER OF BULLETS FIRED, WHICH BULLETS ACTUALLY RESULTED IN DEATHS, ETC. DEFENSE ALSO ALLEGED THAT NIMEIRI HIMSELF HAD PRESENTED SIMILAR WEAPONS (KALASHNIKOV) TO 13 PALESTINIAN CADET OFFICERS

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ON GRADUATION FROM SUDANESE MILITARY ACADEMY 1970. PROSECUTION

RE-CROSS-EXAMINATION WAS BRIEF. THEN CHIEF PROSECUTOR ABDEL MONEIM MUSTAFA APPEARED CATCH DEFENSE BY SURPRISE, FIRST AGREEING DROP CHARGE RELATING TO FORGED VISAS SINCE THIS WOULD REQUIRE SUMMONING SUDANESE AMBASSADOR FROM BEIRUT AND THEN ANNOUNCING THAT HE WOULD WITHDRAW ALL REMAINING PROSECUTION WITNESSES. HE STATED HE BELIEVED THERE WAS ALREADY AMPLE EVIDENCE TO PROVE KILLINGS. DEFENSE RESPONDED BY ANNOUNCING THAT IT WOULD IN THIS CASE CALL VICE PRESIDENT GENERAL BAGHIR AND MINHEALTH ABDUL GASIM MUHAMMAD IBRAHIM, BOTH FORMERLY ON PROSECUTION LIST, AS DEFENSE WITNESSES.

3. JUDGE THEN COMMENCED TO QUESTION EACH DEFENDENT IN TURN AS TO WHETHER HE HAD ANYTHING TO SAY ON HIS BEHALF. TERRORIST "POLITICAL "

LEADER RIDZIK AL-QAS MADE LONG EMOTIONAL STATEMENT. HE HIGHLIGHTED PLIGHT OF PALESTINIAN PEOPLE AND STATED THAT ALL ARAB STATES, KNOWING THAT PALESTINIANS COULD NOT OPERATE ON THEIR OWN SOIL, HAD GIVEN THEM FREEDOM TO OPERATE ANYWHERE ON ARAB LAND. HE CITED CASE ASSASSINATION WASFI TEL IN CAIRO AS AN EXAMPLE (PERPETRATORS OF WHICH RELEASED BY EGYPT). PALESTINIANS HAD TO PROVE, CONTRARY TO PREDICTION JOHN FOSTER DULLES, THAT THEIR YOUNG HAD NOT FORGOTTEN. AS TO WHY THEY HAD ACTED IN KHARTOUM WHEN THEY DID, RIDZIK SAID THIS WAS NECESSARY SINCE DCM MOORE WAS ABOUT TO LEAVE. LATTER WAS MAIN TARGET FOR WHAT RIDZIK ALLEGED TO BE HIS MAJOR ROLE AS CIA AGENT THROUGHOUT MIDDLE EAST (DEFENSE ATTORNEY HAS TOLD EMBASSY ATTORNEY THAT DEFENDANTS DID NOT, NOR DO THEY NOW, BELIEVE THIS). AS FOR AMBASSADOR NOEL, HE WAS "AMERICAN IMPERIALIST" WHILE GUY EID WAS "ISRAELI SPY". RIDZIK AGAIN CITED SUPPORT SUDANESE LEADERS FOR PALESTINIAN CAUSE, RECALLING NIMEIRI STATEMENTS AFTER HIS TRIP TO JORDAN IN SEPT 1970 AND ABUL GASIMS ALLEGED STATEMENTS TO TERRORISTS THEMSELVES DURING NEGOTIATIONS IN SAUDI EMBASSY AT TIME OF INCIDENT. RIDZIK CLAIMED INTENTION HAD NOT BEEN TO KILL HOSTAGES BUT THAT ARROGANCE PRESIDENT NIXON HAD FORCED ISSUE. RIDZIK SAID HE TOLD ABUL GASIM AT TIME "NIXON SOLD HIS PEOPLE. WE WERE NOT READY TO BUY". RIDZIK ALSO CLAIMED ALL ARABS KNOW THAT NOTHING HAPPENED TO THOSE WHO KILLED PALESTINIANS IN BEIRUT AND FLED TO US EMBASSY THERE. SO WHY ARE WE TO BE PUNISHED?

4. "MILITARY" LEADER TARIQ ALSO SPOKE BRIEFLY, IN EFFECT STATING THAT CONFIDENTIAL

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THIS WAS MILITARY OPERATION OF BSO, THAT HE AND HIS COLLEAGUES JUST CARRYING OUT MILITARY ORDERS. FINALLY ONE OF REMAINING DEFENDANTS CITED HIMSELF AS EXAMPLE OF TRAGEDY INFLICTED ON PALESTINIAN PEOPLE, CLAIMING HIS MOTHER KILLED BY AMERICAN BAYONET IN HABS OF ISRAELI, THAT HIS FATHER KILLED DURING SEPTEMBER 1970 FIGHTING, SO HE LEFT WITH NO HOME, NO PARENTS. HENCE HE WAS FEDAYEEN AND HE PREPARED TO DO ANYTHING AGAINST THOSE WHO HAD DONE THIS TO HIM AND HIS FAMILY. OTHER DEFENDANTS

LIMITED THEMSELVES TO CONCURRING IN STATEMENTS OF RIDZIK AND TARIQ.

5. ON CONCLUSION ABOVE STATEMENTS, JUDGE ASKED DEFENSE AND PROSECUTION MEET WITH COURT PRIVATELY. WHEN THIS MEETING COMPLETED, CHIEF DEFENSE COUNCIL ANNOUNCED DEFENSE WITHDRAWING REQUEST CALL BAGHIR AND ABUL GASIM AND WOULD CALL NO WITNESSES (FOR RATIONALE, SEE PARA 7 BELOW). WITH PRESENTATION BOTH CASES THUS COMPLETED, JUDGE ANNOUNCED THAT HE GIVING PROSECUTION UNTIL JUNE 10 TO PREPARE ITS SUMMATION AND PRESENT COPIES TO COURT AND TO DEFENSE. COURT WILL THEN HAVE UNTIL JUNE 15 TO PREPARE ITS STATEMENT AT WHICH TIME COURT WILL MEET AND BOTH STATEMENTS WILL BE PRESENTED. COURT WILL THEN PRESUMABLY ANNOUNCE DATE AT WHICH IT WILL PRESENT ITS FINDINGS.

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FM AMEMBASSY KHARTOUM

TO SECSTATE WASHDC PRIORITY 8274

INFO AMEMBASSY BRUSSELS

C O N F I D E N T I A L SECTION 2 OF 2 KHARTOUM 1275

6. EMBASSY HAS REVIEWED WITH OUR LEGAL ADVISOR STEPS WHICH SHOULD FOLLOW FROM NOW ON. FIRST, AS TO TIMING OF COURT DECISION FOLLOWING STATEMENTS JUNE 15, THIS IS UNCERTAIN. IN SUCH IMPORTANT CASES, DECISION IS OFTEN WRITTEN RATHER THAN SIMPLY GIVEN ORALLY AND THUS PROCESS COULD TAKE LONGER (EMBASSY ADVISOR WILL SEEK GET SOME INDICATION OF COURT'S INTENTIONS ON THIS POINT). IF DEFENDANTS FOUND GUILTY OF KEY CHARGE OF MURDER, DEATH SENTENCE IS MANDATORY, BUT COURT CAN, IN CONFIDENTIAL RECOMMENDATION TO HIGH COURT (EQUIVALENT TO SUPREME COURT), URGE LENIENCY LISTING ITS REASONS FOR DOING SO. IF FINDING IS GUILTY ON MURDER CHARGE, THERE IS AUTOMATIC REVIEW BY HIGH COURT TO CONFIRM SENTENCE. THIS DOES NOT INVOLVE COURT

SESSION BUT SIMPLY HIGH COURT MEMBERS READING RECORD. HIGH COURT IN TURN SUBMITS ITS RECOMMENDATIONS, AGAIN CONFIDENTIALLY, TO PRESIDENT. THIS SUBMISSION WILL NOT INCLUDE ANY RECOMMENDATION FOR LENIENCY FROM PRESENT SUPERIOR COURT, BUT IT WOULD BE MOST UNUSUAL FOR HIGH COURT TO REVERSE SUCH RECOMMENDATION. EMBASSY ATTORNEY EXPECTS THIS HIGH COURT REVIEW SHOULD NOT TAKE LONG, ONLY A FEW DAYS. THIS COULD PUT MATTER ON NIMEIRI'S DESK BY LATE JUNE OR EARLY JULY. IN WHAT EMBASSY ATTORNEY BELIEVES BE ALMOST INCONCEIVABLE EVENT THAT COURT SHOULD FIND DEFENDANTS INNOCENT, PROSECUTION TOO HAS RIGHT OF APPEAL TO HIGH COURT. THIS AGAIN, HOWEVER, WOULD ONLY INVOLVE REVIEW OF CASE, NOT FURTHER COURT SESSIONS.

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7. COMMENT. KEY UNCERTAINTY AT THIS POINT IS WHETHER FACT TRIAL PROCEEDING AT SUCH FAST PACE REFLECTS SOME KIND OF RECENT DEAL, KNOWLEDGE ON PART OF ALL PARTIES THAT ULTIMATE OUTCOME (PRESUMABLY FAVORABLE TO TERRORISTS) ALREADY AGREED. ONE OF EMBASSY OBSERVERS AT COURT SESSION JUNE 3 HAD SUCH IMPRESSION AND THERE ARE RUMORS TO THIS EFFECT (REF KHARTOUM 1255) ON STREET. DEFENDANTS THEMSELVES APPEARED CONFIDENT. ONE OF TWO FATAH MEMBERS RELEASED IN OCTOBER TOLD EMBASSY OBSERVER IN COURT JUNE 3 THAT HE EXPECTED ALL TO GO WELL. AGAINST THIS IS VIEW OF EMBASSY ATTORNEY THAT COURT MOVING FAST BECAUSE PROSECUTION HAS ACTUALLY BEEN EXTREMELY CLEVER. CASE IS IN EFFECT PROVED BY DEFENDANTS' CONFESSIONS. BY DROPPING WITNESSES, PROSECUTION DENIED DEFENSE OPPORTUNITY MAKE POLITICAL POINTS AND ALSO SPARED GOS OFFICIALS POSSIBILITY BEING IN AWKWARD POSITIONS. FACT THAT PROSECUTION MOVE MAY HAVE CAUGHT DEFENSE BY SURPRISE MAY BE SUGGESTED BY COMMENT ANOTHER EMBASSY OBSERVER AS WELL AS BY SUBSEQUENT DEFENSE ATTORNEY STATEMENT TO OUR ATTORNEY. AS FOR DEFENSE DECISION WITHDRAW ITS REQUEST FOR TWO TOP GOS WITNESSES, WHILE FACT THIS OCCURRED AFTER MEETING WITH JUDGES AND PROSECUTION SLIGHTLY SUSPICIOUS (EMBASSY ATTORNEY HOPES LEARN MORE ABOUT THIS MEETING), BUT ALSO HAS LOGICAL BASIS IN THAT UNDER SUDANESE LAW BY DOING SO DEFENSE FORCED PROSECUTION LEAD OFF IN SUMMATION AND PUTS ITSELF IN POSITION MAKE LAST REBUTTAL. THIS ADVANTAGE, PERHAPS COMBINED WITH SOME DOUBT AS TO EXACTLY HOW BENEFICIAL BAGHIR AND BUL GASIM MIGHT HAVE BEEN TO DEFENSE CASE, COULD WELL EXPLAIN DEFENSE ACTION. ON BALANCE WE QUESTION WHETHER EVOLUTION TRIAL JUNE " NECESSARILY REFLECTS SUDDEN CHANGE OF EVENTS INDICATING A DEAL. SEEMS CLEAR, HOWEVER, THAT DEFENSE HAS HAD BASIC CHANGE IN STRATEGY IN LAST FEW MONTHS. INSTEAD OF CONTINUING FIGHT JURISDICTION SUDANESE COURTS--FIGHT WHICH THEY

PRESUMABLY CAME TO REALIZE WAS HOPELESS--THEY NOW APPEAR EAGER TO GET TRIAL OVER WITH AND PUT ISSUE--WITH POLITICAL RATHER THAN LEGAL FOCUS--IN HANDS OF NIMEIRI WHERE THEY UNDOUBTEDLY

HOPE FOR FAVORABLE ACTION. IN THIS CONNECTION, DEFENSE TACTICS ARE CLEARLY TO BUILD RATIONALE FOR EXECUTIVE CLEMENCY ON BASIS EXTENUATING CIRCUMSTANCES OF PALESTINIAN CAUSE. NEW TACTIC WAS IN FACT FORECAST IN ATTORNEY GENERAL'S DISCUSSION WITH AMBASSADOR IN LATE APRIL RE LIKELY RAPID PACE OF TRIAL (KHARTOUM 892). IN OUR VIEW COURSE OF LAST THREE DAYS CONSISTENT WITH CONFIDENTIAL

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THAT BASIC CHANGE. IF PATTERN HAS BEEN ALTERED, IT APPEARS BE MORE RESULT OF PROSECUTION SKILL IN DENYING DEFENSE POLITICAL PLATFORM THEY WOULD PRESUMABLY HAVE BEEN ONLY TOO GLAD TO EXPLOIT. IN THIS REGARD, IT INTERESTING THAT, WHILE SUBANESE PRESS JUNE 4 FOR FIRST TIME DOES CARRY REPORT OF TRIAL, IT IS BOTH BRIEF AND CONCENTRATED ON STATE OF PROCEEDINGS. THERE IS NO MENTION OF DEFENSE ARGUMENTS NOR OF RIDZIK'S POLEMICS.

8. EVENTS THEREFORE APPEAR BE MOVING RAPIDLY TO MOMENT OF TRUTH WHEN NIMEIRI MUST MAKE DECISION ON CONFIRMING SENTENCE OR EXTENT OF CLEMENCY. LIKEWISE IT COULD BRING POINT OF COUNTER ACTION BY BSO. IN THIS CONNECTION, FREED FATAH REV IN COURT ROOM TOLD EMBASSY OBSERVER THAT THEY CAPABLE PULLING ANOTHER OPERATION AND JUST WAITING TO SEE WHAT WILL HAPPEN. BREWER

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